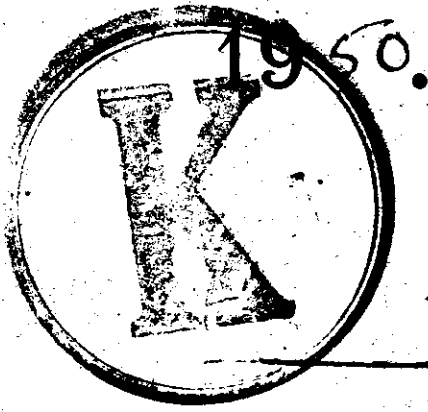




O. Det. of India /
File No. 1950

Legal Department

A BRANCH

Subject:—

Opinions Under the
Defence of India Rules 1939

E
1-16

O. Det. of India /
1950

File No.

Gen. 194 e.

285-A

C O N T E N T S.

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R.I. No. 17585 dt. 27-10-49.

Submitted.

2. It appears that a flat on the 5th floor of Gill mansions Mangalwadi, Girgaum was requisitioned under rule 75-A of the Defence of India Rules in 1945 and allotted to one Mr. S.V. Harshe. The rent of the flat (compensation) was fixed at Rs. 44 per month and Mr. Harshe has been paying it direct to the land-lord. ^{and the land lord is not willing to carry out the repairs.} The flat requires some minor repairs. The A.C.D. propose to give a notice to the landlord as on p. 26 ante, in view of Government Circular N. 5883/39, dated 12-7-1943 calling upon the landlord to carry out the repairs within fifteen days from receipt of the notice to that effect from Mr. Harshe failing which Govt. would carry out the repairs and reduce accordingly the compensation payable in respect of the flat.

The R.L.A. is requested to advise.

3. As pointed out in R.L.A. opinion No. ⁴⁹ 5434, dated the 4th July 1945, there is no liability on the landlord to carry out repairs in the requisitioned premises. ~~It is~~ It will not therefore be possible for Government to compel the landlord to carry out the necessary current repairs. ~~This~~ This view expressed in G.M. R.D. No. 5883/39 dated 12-7-1943 does not appear to be correct. (Of R.L.A's opinion No. 839 Dated 23-1-48).

As has been repeatedly held by the R.L.A. requisition orders under rule 75-A of the Defence of India Rules do not establish relationship of landlord and tenant between the owners and Government (or the allottees) and resort cannot be had to the provisions of Section 23(2) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (for effecting the repairs of R.L.A's opinion No. 6877 dated 22-6-1949).

In the absence of the requisition order it cannot be known whether Govt. has under taken to restore the premises in the same condition in which they were at the date of requisition as is usually undertaken. If so and if Govt. elects to carry out the repairs itself it would not also be possible to recover the amount from the landlord. In the circumstance the Govt. allottee will have to effect the repairs at his own costs.

Sd. 10/11

Office of the R.L.A.

Defence of India
Rules, 1939
Rule 75-A.

The question for R.L.A's consideration is whether the landlord can be required to carry out the repairs to Mr. Harkhe's flat or in alternative whether Government can carry out the repairs and reduce proportionately the compensation payable in respect of the flat.

As pointed out in R.L.A's opinion No. 4934 dated 4th July 1945, there is no liability on the owner to carry out repairs of the requisitioned premises. Consequently it would not be possible for Government to require the landlord to make the necessary repairs. It is presumed that Government has undertaken the liability to restore the premises in the same condition in which they were at the date of requisitioning. If so, if Government elects to carry out the repairs itself, it will not be possible to recover the expenses of repairs from the owner. (Cf. R.L.A's opinion No. 839 dated 23-1-48). Further, it has been repeatedly advised by T.L.A. that an order requisitioning the premises under rule 75A of the Defence of India Rules does not create the relationship of landlord and tenant between the owner and Government and the rent paid is construed as compensation payable by Government. Consequently, resort cannot be had to the provisions of section 23(2) of the Bombay Rents, Hotel and Lodging Houses Rates (Control) Act, 1947 (Cf. R.L.A's opinion No. 6877, dated 22-6-49).

R.L.A's opinion No. 3893, dated 9th May 1942 underlying Government Circular Memorandum, R.D.No. 5883/39, dated 12th July 1943, is based on the wording of Rule 96(3) of the Defence of India Rules. This rule does not apply to requisitions made under Rule 75-A; hence the said opinion does not hold good.

In the present case, Government may carry out the repairs for the allottee and recover the costs thereof from him as the repairs would be for his benefit.

3 Continued.

sd. 10/2

Remembrancar of Legal Affairs.

H.R. tte to L. & H.D.No. 2068 , dated the 11th Feb.,
1950.

SSM / 25/6/56.

Submitted.

It appears that a trade dispute between certain motor transport owners of West Khandesh and their employees was referred for adjudication under the Defence of India Rule 81A as continued in force by sec. 2 of the Emergency Provisions (Continuances) Ordinance, 1946 by an order made on the 23rd Oct. 1946. The adjudicator's award was made binding on the parties for a period of four months from the date of its publication viz. 6-2-1947. Before expiry of this period the Workers' Union complained to Govt. that the employers had not carried out the award. The D.M. West K^handesh was therefore asked to make an inquiry into the matter. The sub-Divisional Magistrate, Dhulia City has partly completed his inquiry and his findings are that employees at Serial Nos. 21, 26, 28, 29, 31, 32, 34, 40, 50 to 46, 49 and 52 have not carried out the award and therefore be suitably dealt with. Labour and Housing Deptt. is of the view that in view of A.G.'s opinion No. 35, dated 30-6-47 Govt. can still enforce the award. It is therefore proposed to prosecute the defaulting employers in the Court of the F.C. Magistrate, Dhulia by authorising the D.M. to launch such prosecutions. The R.L.A. is requested to advise on this and on the question of feasibility of the prosecution itself.

2. In the statement accompanying Huzur Deputy Collr's letter dated 28-2-1949, against employees at serial Nos. 2, 26, 28, 29, 31, 32, 34, 40 to 46, 49, 50 52 against whom it is proposed to take action, he invites attention to a separate report made by him against these employers. The report referred to by him is not among the papers forwarded by the L.&H.D. As pointed out by the Secy. L. & H.D. oral evidence of workers may be collected to show that the awards have not been implemented by the employers. If it is found that there is sufficient

sufficient evidence to prosecute the defaulting employers, the D.M., West ^hKandesh, may be instructed to launch prosecution against them in the Court of the F.C. Magistrate Dhulia, because the offence being punishable with imprisonment which may extend to three years would be treated as a warrant case. (cf. Schedule II to Criminal Procedure Code - offences against other laws.

Office of the R.L.A.

In this case the dispute between the Motor Transport Owners and their employees was referred for adjudication under the Defence of India Rule 81A as continued in force by section 2 of the Emergency Provisions (Continuances) Ordinance, 1946 by an order made on the 23rd October 1946. The adjudicator's award was made binding on the parties for a period of four months from 6th February 1947. The workers complained in 1947 that the employers have not carried out the terms of the award, and therefore there was a breach of the award. It is proposed to prosecute the employers for breach of the award now after a lapse of over three years. I am of opinion that unless there be some special reason a prosecution at this distance of time would not be expedient. Apart from this in the absence of the report of the Huzur Deputy Collector referred to by him in his letter, dated the 28th December 1949, it would not be feasible in this case.

14/4

Remembrancer of the Legal Affairs.

U.R. to Labour and Housing Department No. 5144

Dated the 15th April 1950.

SSM / 26/6/56.

L.D.R.I.No. 15469 dt. 19-8-1950.

Submitted with reference to R.L.A's opinion No. 20568 dated 11/2/50. For the facts of the case please see office note dated 10/1/50. It is now revealed that no written contract has been entered into with the owner of the premises. Attempts were made to communicate with the landlord and ask him to carry out the repairs but he is avoiding to come to terms.

The questions for R.L.A' consideration are:-

- 1) Whether in the absence of any contract the Landlord can be forced now to enter into a written contract and if so,
- 2) Whether a condition of current repairs liability can be included therein,
- 3) Whether the Collector can inform the landlord that payment of compensation will be withheld pending this entering into a written contract.

If the landlord is compelled to enter into a contract now under threat that the compensation due to him will be withheld pending his doing so, such contract will be considered to have been entered into under coercion and will be voidable at his instance (see secs. 14, 15 and 19 of the Indian Contract Act, 1872). In view of this position the best course would be for Govt. to carry out the repairs at the cost of the allottee, as pointed out in opinion No. 2058 dated 11/2/1950.

sd. 1/9

A.L.R.

Under Section 19(1)(a) of the Defence of India Act, 1949, 'where the amount of compensation can be fixed by agreement it shall be paid in accordance with such agreement.' This provision does not contemplate that the execution

execution of an agreement is imperative. If the compensation offered by the Collector is agreed to by the landlord it would be deemed to have been fixed by agreement within clause (a) of section 19(1). In the present case, the requisition of the premises was made sometime in 1945 and the compensation must have been fixed long ago. It is also being paid regularly to the landlord. These facts would clearly indicate that the compensation thus fixed must have been agreed to by the landlord, in which case a separate written agreement would not be quite necessary. In the circumstances, if the landlord is unwilling to execute a written agreement it would not be possible for Government to force him so to do. The reply to the first question would be in the negative.

2. The second question does not survive.

3. The third question will have to be answered in the negative for the compensation being fixed and agreed to by both parties it would not be open to Government to withhold payment thereof on the plea that the landlord has not executed a written agreement.

Office of the R.L.A.

Defence of India
Act, 1939.

Section 19(1)(a).

Under section 19(1)(a) of the Defence of India Act, 1939, 'where the amount of compensation can be fixed by agreement it shall be paid in accordance with such agreement.' This provision does not contemplate that the execution of an agreement is imperative. If the compensation, offered by the Collector is agreed to by the landlord it would be deemed to have been fixed by agreement within the meaning of clause (a) of section 19(1). In the present case the requisition of the premises was made sometime in 1945 and the compensation must have been fixed long ago. It is also being paid regularly to the landlord. These facts would clearly indicate that the compensation thus fixed must have been agreed to by the landlord, in which case a separate written agreement would not be quite necessary. In the circumstances, if the landlord is unwilling to execute a written agreement it would not be possible for Government to force him to do. The reply to the first question would be in the negative.

2. The second question does not survive.

3. The third question will have to be answered in the negative for the compensation being fixed and agreed to by both parties it would not be open to Government to withhold payment thereof on the plea that the landlord has not executed a written agreement.

sd. 2/9

Remembrancer of Legal Affairs.

U.R. to R.C.D. No. 12552 Dated 4th September, 1950.

R.I. No. 17887
29.5.50.

Submitted:

Pl. see R.A's opinion No. 9212, dated 29th Sept. 1948, and notes underlying the same. Govt. of India is of the view that in case of property acquired under the defence of India Act, 1939 or the rules framed thereunder compensation is payable as provided by sect. 19 of the Act. It is further stated that in view of sect. 19 of the- (1)(a)(i) of the Defence of India Act expressly making sub-sect.(1) of sect. 23 of the Land Acquisition Act along applicable, interest cannot be awarded to the owner of a property on the ground that he was kept out of use of money which is ultimately found payable to him by way of compensation. R.D. is of the view that since lands were taken over and no rent was paid to their holders the claim of interest is equitable. The R.L.A. is requested to advise in the matter.

2. It is true that the provisions of sect. 34 of the Land Acquisition Act, do not apply in cases where land is acquired under the Defence of India Rules but on the general principle laid down in the Interests Act, 1838, and on grounds of equity and justice the landowner would be entitled to interest. There is therefore no objection to making reference to the Govt. of India as proposed in the R.D. note.

Sd. 1/11

SSM / 26/6/56.

Office of the R.L.A.

Acquisition of
payment of
interest Defence
of India Act.

It is true that the provisions of section 34 of the Land Acquisition Act, do not apply to cases where land is acquired under the Defence of India Rules but on the general principle laid down in the Interests Act, 1839 and on grounds of equity and justice the landowner would be entitled to interest. There is therefore no objection to making a reference to the Government of India as proposed in the R.D. note.

sd- 2/11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 15336, Dated the 3rd Nov. 1950.

Submitted.

Cottage No. 27 A, Turner Road, Bandra was requisitioned by the Collector of Bombay under rule 75-A of the D of I rules by order No. W.A.R. 280 dated 30-4-45 and continued under requisition under sed. 3 of the requisitioned Land (Continuance of Powers Act) 1947. The cottage was derequisitioned with effect from 28-6-50 the order derequisitioning the premises is not among the pps. The landlord claims Rs. 2055/- on account of damage caused to his property while it was under requisition. With the amount claimed the landlord intends to carry out the necessary repairs to the premises.

The question for R.L.A's consideration is whether the landlord is entitled to the compensation for damage done to his property or whether he is responsible for carrying out the necessary repairs. And, if so, whether the compensation will have to be settled by an arbitrator or in a court of law if there is a dispute as to the amount payable to the landlord. It has repeatedly been held by the R.L.A. that an order requisitioning the premises under rule 75-A of the D. of I. Rules does not create the relationship of landlord and tenant between the owner and Govt., hence sec. 23(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 will not apply. Besides Govt. has undertaken to restore the property in the same condition in which it was at the time of requisitioning hence Govt. will be liable to compensate the landlord if any damage is caused to the property. In the event of a dispute as regards the amount to be paid to the landlord on this account, the compensation will have to be settled by an arbitrator appointed under sed. 19 of the D. of I Rules 1939 (see sub.sec(i))

(see sub. sec (i) of sec. 6 of the R.L.(c of p) Act,
1947).

Sd - 8/11

SSM / 26/6/56.

Office of the R.L.A.

Defence of India
Rules, 1939

Rule 75 A

Requisitioned
Land (Continuance
of Powers) Act,
1947.
Section 6(1).

It has repeatedly been held by the R.L.A. that an order requisitioning the premises under rule 75-A of the Defence of India Rules does not create the relationship of landlord and tenant between the owner and Government, hence section 23(2) of the Bombay Rents Hotel & Lodging House Rates Control Act, 1947 will not apply. Besides Government has undertaken to restore the property in the same condition in which it was at the time of requisitioning hence Government will be liable to compensate the landlord if any damage is caused to the property. In the event of a dispute as regards the amount to be paid to the landlord on this account, the compensation will have to be settled by an arbitrator appointed under section 19 of the Defence of India Rules 1939.

sd- 11/11

Remembrancer of Legal Affairs.

U.R. to H.D. No. 15321, dated 13th Nov. 1950.

SSM / 25/6/56.